

Ethics of War as a Part of Military Ethics[♦]

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Military ethics and ethics of war

The ethics of war are a part of military ethics, and military ethics are a part of political ethics. Although war has its own specific logic both in terms of its existence and its functioning the matter in the end is political: what is the political purpose of war, or of what is the prerequisite of it. This prerequisite is the armed forces. It is true that armed forces have many different, often multifunctional, tasks and duties, but the main purpose of them is what makes the meaning and value of war, and that is the peace, the end state characterized by stability and predictability (the main job of an army is either to wage a war or to prepare for it). War is, by definition, a temporary state of affairs aimed to its end, which is a (new) peace. If this is so then the purpose of armed forces is not to be used but actually quite the opposite: not to be used, if possible. Its primary purpose is to avert a possible attack. That clearly establishes defense as the utmost and possibly only justification of war. The final mission of armed forces is to prevent war if possible, and only if necessary to engage if waging a war.

From this viewpoint military ethics covers a broader terrain than ethics of war. But what's 'ethical' there in the first place? On one side we have a belief that in war, like in business, 'everything is allowed'. This standpoint of *amorality* of war is very comfortable for warriors as it absolves them (and us, if we accept that standpoint) from difficult analyzing of complex issues that might seem hard to solve. This standpoint, however, is widespread as a kind of broadly accepted prejudice. It has a clear benefit of safeguarding all those engaged in a war from too big burden of responsibility and often of conflict of responsibilities. On the other side there is a strong attitude to assess the war exclusively in terms of its badness as something always and necessary "evil". If there is a possible justification of war it should be somewhere in between these opposite standpoints. This might produce the impression that justifying war is a hopeless task, or something utterly contradictory: impossible despite being necessary.

On the other side the *theoretical* justification seems to be at odds with what we find on the *phenomenological* level as the reality of war, as the real experience of many of those affected by it. There are many possibilities how this experience might be established and articulated. Those who make decisions, and many of those who fight, may take their standpoint to express what they believe in and are ready to sacrifice for, by saying that the cause of the

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war is “their own”. The readiness to fight for one’s own cause is a paradigmatic form of defense. The conflict then is presumably a conflict of adverse political interests, where victory being is being a substantive achievement (national freedom or even survival), and defeat is a significant loss. This is the standard *political approach* to war. However, there are other possibilities to interpret the case of having a “cause of their own”: it might be a deep belief of duty to defend what’s perceived worth to be defended independently of whose interests are invested in that cause. In that case we are ready to fight for our ideals which might incorporate more interests of others than of ourselves, implying our readiness to sacrifices for those ideals. Which ideals? They might be very different. Usually those are religious beliefs, or ideological schemes. Here we have an *eschatological approach* to war, frequently present not only in justifying the participation in wars but also in perceiving some wars as the fight for ‘final’ victory of ‘good’ over ‘evil’, as a ‘war against the war itself’. There are still other possibilities on the level of phenomenology of experience. Many are going to war for reasons to experience pastime, or adventure, or to fight off boredom or the feeling of absurdity of life. Some take war to be a kind of ceremony, something glorious. These borderline cases, exceptional or not, are of less interest for us in depicting the phenomenology of war.

However, there is one form of experiencing war which is, in my opinion, of special interest. For many war is just another unfortunate accident, another limit and setback in their life, short and miserable as it can be. This *third*¹ approach to war (besides political and eschatological) we may call *cataclysmic*. According to this approach war is something that *happens* to us, as individuals or nations, and is catastrophic in its final meaning, similar to natural disasters. It seems to me that this aspect of war, although a grand theme in literature, is rather neglected in philosophical, and also ethical, elaboration of the phenomenology of war. The standard situation “he or me”, experienced by warriors in the middle of the battle belongs also here. However, some of the basic features of war, *unpredictability* of its outcome and *irreversibility* of its main course, corroborate this approach to war: war is a kind of disaster for many, or most, of those who participate in it. Jumping to the conclusion in a way, I would say that this approach indicates one of the most important features of war, a feature of the utmost ethical significance – *the lack of any feasible, or even plausible, control of future time* (at least for those inside the frame of it). This lack of control of our future is actually the absence of what makes the life normal: predictability, existence of real and valid rules of life, the laws and customs which makes our life plans realizable in rather short time span of individual lives, and sometimes also within a viable span of collective life. In this sense the cataclysmic aspect of wars is a very basic feature of them.

Ethics of war and ethics in war

¹ In this compartmentalization of war I am following Anatol Rapaport’s approach from his “Introduction”, in C. von Clausewitz, *On War*, ed. by A. Rapaport, Penguin Books, 1968; cf pp. 14-16.

Ethics of war traditionally encompasses two lines of argumentation in the course of its justification. First, what counts as a possible justification of war as such (*jus ad bellum*) – what could be a *legitimate basis* for going to war in the first place. Second, what are *the rules* of war (*jus in bello*), their purpose being to reduce the costs of war (as an action that is, by definition, a temporary state of affairs directed to its conclusion), and to make war more humane and less cruel (as it is an action in which, by definition, many civil laws are partially temporarily suspended, allowing killings and other serious immoral acts). Moreover, although war is a very serious, risky, and far-reaching endeavor to be engaged in without good reasons, it seems absurd that both sides in a war can battle for a just cause.

This seeming absurdity, however, is a part of the definition of war and its constitutive rule²: that *victory* gives right. The rule functions in a context of conflict characterized by two conditions: first, that there is no other way to resolve that conflict (the condition of last resort, meaning that all other possibilities had been exhausted), and, second, there is a mutual understanding not to allow the conflict to remain unsolved. This means that victory is a real constitutive rule not only of war but also of what its result is going to be. The winning is thus not only the defeat of the adversary but also the factor of legitimizing a new state of affairs, the one which should replace the old *status quo ante*.

Perhaps this legitimizing function of victory is the connecting line between *ius ad bellum* and *ius in bello*. The victory should be a legitimate victory. Victory has *the logical form of consent*, and this consent includes the acceptance of uncertainty contained in it. This implies that either side can win or lose. Otherwise we would have a police action which is characterized by lack of any normative reciprocity between sides in conflict. Both sides strive to win, and both sides should be ready to accept the defeat. This is the point where the concept of *capitulation* enters the field. If victory should serve as a *constitutive rule* of the war it has to have its counterpart in capitulation, which should contain the same form of consent as the victory.³ Otherwise the defeated would not accept the impression of the winning side that war had ended by their victory. This means that victory, if it should give an end to a war, must be accompanied by a valid capitulation. What does this mean?

It means that capitulation is also a constitutive rule of the war. As a rule it has some distinct features which make it to be such a rule. These are at least the following two features: 1) no annihilation of the defeated is allowed, and 2) capitulation must not imply humiliation of the defeated. (Kant would add the third condition: no formal punishment)⁴. This implies

² Constitutive rules are a part of a comprehensive theory of institutional facts developed by John Searle; cf. *Speech Acts* (1969), *Intentionality* (1983), *The Construction of Social Reality* (1995).

³ Victory may also be a regulative rule, as an act of mere establishment of the state of affairs by which a war appears to end, without acceptance of the defeat by the vanquished. In this case, the outcome might be closer to a *ceasefire*, not a real peace - although it may start to look as a peace after a sufficiently long time and after some sort of acceptance of the new state of affairs has been established. But the feature of ceasefire might endure for very long periods of time. For example, Corsica seems to never have sincerely accepted the fact that Republic of Genoa *sold* the Island and people living on it to the Kingdom of France, in 1768. Many generations have lived in this arguably politically undefined, and presumably uncomfortable, form of life. Another example might be the war between Chile and Bolivia in 1879, which ended without a clear and sincere consent; this might mean that the treaty of 1884 is still only a ceasefire.

⁴ Cf. Kant, VI, §57-8.

something that might be forgotten in contemporary inflated just war theorizing kind of justification of “new wars”: normative necessity of *honorable defeat*. Or, in other words, the mutual, reciprocal, respect of warring sides.

Put aside that this approach makes capitulation much easier (and wars shorter and less costly), it keeps safe merits of the distinction between *ius ad bellum* and *ius in bello*,⁵ corroborates the function of war as a (last but necessary) means of resolving of otherwise unresolvable conflicts (those for which neither side would allow to remain unresolved), preserves the distinction between being captured and being arrested, and so on. From the moral point of view this approach makes capitulation a matter of not only political but also moral responsibility: it can become a moral duty to capitulate. The capitulation might become the last resort of defense. It cannot be thus if capitulation is not a constitutive rule with distinct conditions of validity, as e. g. in “unconditional capitulation”⁶.

There are some further important features of capitulation which is, along with the victory, another side of the same constitutive rule. First of all there is some accepted initial equality⁷ of warring sides in their assessment of a viable *prospect to success*. The absence of such a prospect indicates radical irresponsibility on the part of losing side, independently of the time frame (i. e. of how long they need to lose). If winning was *absolutely hopeless* there is a (political, but also a moral) *duty* to surrender (or, rather, not to engage in the conflict at all!)⁸. Then there is *reciprocity* of warring sides which is the base of their mutual respect. This respect implies that they are not treating each other as criminals: our enemies are not perceived by us as criminals (as we should not be perceived as criminals by our enemies). This is the famous Walzerian *prima facie* moral equality of combatants⁹. Finally, there are many kinds of immunity,

⁵ These merits are under heavy attack in the main stream of contemporary just war theorizing (by J. McMahan, D. Rodin and others).

⁶ Insisting on unconditional capitulation might be one of the reasons for extremely long duration of some contemporary wars, disguised in the form of military interventions, e.g. the war in Afganistan. It prevents negotiations to reach *mutually* acceptable agreements. (It seems that the concept of „uncondional surrender“ contains some radical Manichean features. It also seems that such approach has a tendency to exclude any tolerance between adversaries)

⁷ Initial equality implies the uncertainty about the victory (which is the assumption normatively necessary for respect needed for the imputation of responsibility), and is the prerequisite of the possibility to employ the criterion of justice to war (the „*ius*“ in *ius ad bellum*). Regarding the latter cf. Thucidides, *The History of Peloponesean War*, 5, 89: „standard of justice depends on the equality of power to compel“ [translated by Rex Warner, Penguin Books, 1956], or, in another translation, „justice is enforced only among those who can be equally constrained by it“ [traslated by Walter Blanco, W. W. Norton, A Norton Critical Edition, 1998].

⁸ This is a version of the Kantian ‘principle of rationality’: “[W]ho wills the end also wills (necessarily in conformity with reason) the sole means to it that are within his control”, cf. Kant, 4:417-18. It is not possible to will the end without simultaneous willing the necessary means, and if there are no means the willing is empty and pointless. This means that it is not possible to *will* (it is possible, however, to wish!) something for which *there are no means!* An attempt to convert wishing something impossible into willing it is irresponsible, and if the matter is serious enough, also immoral.

⁹ Cf. M. Walzer, *Just and Unjust Wars*, Basic Books 1977, p. 41: “Without the equal right to kill, war as a rule-governed activity would disappear and be replaced by crime and punishment, by evil conspiracies and military law enforcement”.

not only of non-combatants but also a fine gradation of responsibility depending of the situation, time, place, rank, etc.¹⁰ Above all, this approach preserves the dignity of human beings as moral agents responsible for their decisions and actions (which forbids treating them without respect deserved by all, including those who are guilty for what they did). All this depends on the serious acceptance of the distinction between *ius ad bellum* and *ius in bello*.

New approach

Perhaps these features have become overcome and obsolete nowadays, perhaps a kind of inequality is what's needed for the maintenance of the world peace, or for some other goals, presumably political (e. g. democratization of the world). In this context we face several problems. First, the nature of victory and defeat change cardinally: the defeated side, having no equal moral standing (to set their own goals and try to achieve them by, e. g. defending those goals, or by defending themselves), become an unclear matter. What is the victory today? What is its goal? And, especially, who are those who are doomed to lose? Should they remain what they were from before (except of changing their constitutions as the result of capitulation, but without either annihilation or humiliation)? Or should they change more fundamentally by accepting what are the values the winners deem worth enough to be defended, independently of whose values those are? If the goal is "winning the hearts and minds" of those on the other side victory changes its very meaning, or become superfluous and not needed as a concept. Should "others" become a part of what "we" are, for the process to end? Can this be a way to "overcome" war, by making the world unique and uniform?

Why the others couldn't just capitulate, and remain what they were from before?

There is one very strange question here: should winning the hearts and minds be the mutual goal of both sides in conflict? Or is it possible that it is goal of only one side, the one which is presumably stronger, and that other side is not interested in winning hearts and minds of their attackers (instead of that they might be interested only to defend themselves, and nothing else)? Finally, what it would mean if both sides were, mutually, interested, in winning the hearts and minds of the other side? Whichever is the case the victory, and for that matter also the defeat, seem to become redundant. Is this the characteristic of contemporary *asymmetric wars*? What is the status of defense, or self-defense then? It seems that *defense has become irrelevant*. The main problem here is what is happening with the freedom, individual and collective, if defense is either to become an unclear concept or entirely loses its meaning and relevance.

There are other complications: in contemporary asymmetric wars the condition of proportionality seems to imply a need to tailor the amount of force according to different kinds

¹⁰ This also resolves the famous case of the naked soldiers, or, for that matter, the captured soldiers as well as messengers or negotiators.

of adversaries: the weaker the other side the smaller amount of legitimate force is supposed to be proper to use. Apart from being the matter of rationality (i. e. that it is not needed to use a surplus of force to gain what can be achieved with less), this, taken as *ideologem*, might postpone the end of war, or preclude it.

Another issue is the so called “non-culpable ignorance” issue: the issue of responsibility in context of prospect of *possible* success. It is even meta-ethically interesting: how can we conclude from the *fact* that some were vanquished to the conclusion that they had no reason at all to sincerely and plausibly believe that they had a chance to win? If such a chance didn't exist in any possible world they would be irresponsible in the sense that they do not deserve any respect as a warring side (as presumably, e. g., terrorists). The role of their sincerity and the quality of their assessment seem to be in principle independent from the fact of defeat as such.

Finally, the on-going attempts to criminalize war imply reducing the war to police action. This is a far-reaching process in which all the differences between war and police action collapse, replacing the war with a police action. But those differences seem to be significant: in police action there is no equality, reciprocity and mutuality between two sides. There is also no normative unpredictability of the outcome: it is in advance determined who is having the right and who not. The normative (especially legal) control of the future in police action, unlike the war, is entirely secured (and the result is *success*, rather than *victory* – the failure, if happens, must to be correctable). The distribution of rights and responsibilities is quite different. In police action all rights are on the side of police, the “other side” has no rights at all: they have no right to counteract, do defend themselves, or even to run away. They have a *strictu sensu* duty to surrender, and cooperate in that process. There is no victory or defeat there, only success or failure. However, in the absence of world state what is the police action which goes across national borders? Reduced to the bottom line this implies that contemporary asymmetric warfare might be seen as the situation in which two police, or police-like, forces (one or both of which could be, regarding the modality of their representation, *ad hoc* self-defensive “militias”) fight, treating each other as criminals (as terrorists, usurpers, aggressors, crusaders, jihadists, etc.).

On the basis of all said my concluding questions are: does this new approach provides solutions for all important disputes and conflicts we are faced with, or rather normatively precludes many of them by making them illegitimate as such and therefore normatively impossible? What impact on freedom does, or could, it make? If the concept of defense is amputated from the inventory of concepts present in the world, which perhaps might maintain peace and prosperity in the world, how viable and stable such a state can be? The new approach might eliminate these questions of the main stream, and certainly they are hard to answer, but the duty of a philosopher is quite this: to raise questions which might be provocative, with the purpose to explore deeper issues contained in the essence of what we are thinking and doing. Especially when the theme is so practically important as the logic of solving conflicts, which will be with us as long as we are alive and free beings.